

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 17475US02)

***In the Application of:***

Akira Yamanaka et al.

***Serial No.:*** 10/773,610

***Filed:*** February 6, 2004

***For:*** METHOD AND SYSTEM FOR  
EQUALIZATION IN A  
COMMUNICATIONS SYSTEM

***Examiner:*** Emmanuel Bayard

***Group Art Unit:*** 2611

***Confirmation No.:*** 7768

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Transmitted via the Office electronic filing  
system **September 30, 2010.**

**APPLICATION FOR RECONSIDERATION OF THE  
DETERMINATION OF PATENT TERM ADJUSTMENT  
UNDER 35 U.S.C. 154(b)  
ACCOMPANYING THE NOTICE OF ALLOWANCE  
(37 CFR § 1.705)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed July 9, 2010 ("the Decision"), to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicant's calculation shows that the correct patent term adjustment should be 1737 days.

The bases under § 1.702 for the adjustment are as follows.

### **Positive Patent Term Adjustment**

#### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1063 days, minus 23 days consumed by an appeal, for a net adjustment of 1040 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was February 6, 2004,
- the third anniversary of the actual filing date was February 6, 2007,
- the first request for continued examination of the application (RCE) under 35 USC 132(b) was filed on January 4, 2010.
- the first RCE was filed 1063 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment on this ground.

The patent term adjustment under the three-year rule was reduced by an appeal.

- review by the Board or a Federal court began on the date the Notice of Appeal was filed, i.e. November 27, 2007,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and

Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. December 20, 2007,

- the time consumed by the appeal thus ended on December 20, 2007, after an interval of 23 days.
- The patent term adjustment under the three-year rule of 1063 days, reduced by appeal time of 23 days, is thus 1040 days.

### **Reductions in Patent Term Adjustment**

#### **Removing Overlap**

- Two or more grounds of delay overlap from February 6, 2007, to March 20, 2007, totaling 42 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

### **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Decision are as follows:

#### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	1040

## Reductions in Patent Term Adjustment

- **Removing Overlap**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	42

### Conclusion

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 1737 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Dated: 30-SEP-2010

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## 17475US02

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10/773,610	METHOD AND SYSTEM FOR EQUALIZATION IN A COMMUNICATIONS SYSTEM	07-16-2010::12:44:13
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## Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/773,610

Filing or 371(c) Date:	02-06-2004	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	739
USPTO Adjustment(days):	-	Explanation Of Calculations	

## Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
07-09-2010	Mail Notice of Allowance		
07-08-2010	Notice of Allowance Data Verification Completed		
07-08-2010	Document Verification		
05-07-2010	Date Forwarded to Examiner		
04-29-2010	Response after Non-Final Action		
01-29-2010	Mail Non-Final Rejection		
01-29-2010	Non-Final Rejection		
01-07-2010	Date Forwarded to Examiner		
01-04-2010	Request for Continued Examination (RCE)		
01-07-2010	Disposal for a RCE / CPA / R129		
01-04-2010	Workflow - Request for RCE - Begin		
10-30-2009	Mail Final Rejection (PTOL - 326)		
10-29-2009	Final Rejection		
09-03-2009	Date Forwarded to Examiner		
07-08-2009	Response after Non-Final Action		
04-08-2009	Mail Non-Final Rejection		
04-07-2009	Non-Final Rejection		
02-11-2009	Date Forwarded to Examiner		
01-09-2009	Response after Non-Final Action		
10-10-2008	Mail Non-Final Rejection		
10-09-2008	Non-Final Rejection		
07-29-2008	Date Forwarded to Examiner		
06-19-2008	Response after Non-Final Action		
03-19-2008	Mail Non-Final Rejection	26	
02-25-2008	Non-Final Rejection		
12-20-2007	Date Forwarded to Examiner		
12-20-2007	Mail Appeals conf. Reopen Prosec.		
12-19-2007	Pre-Appeals Conference Decision - Reopen Prosecution		
11-27-2007	Request for Pre-Appeal Conference Filed		
11-27-2007	Notice of Appeal Filed		
10-30-2007	Mail Advisory Action (PTOL - 303)		

10-29-2007	Advisory Action (PTOL-303)	
10-23-2007	Date Forwarded to Examiner	
10-22-2007	Amendment after Final Rejection	
08-30-2007	Mail Final Rejection (PTOL - 326)	
08-28-2007	Final Rejection	
06-19-2007	New or Additional Drawing Filed	
06-25-2007	Date Forwarded to Examiner	
06-19-2007	Response after Non-Final Action	
03-20-2007	Mail Non-Final Rejection	713
03-19-2007	Non-Final Rejection	
02-27-2007	Case Docketed to Examiner in GAU	
07-11-2006	Correspondence Address Change	
07-11-2006	Change in Power of Attorney (May Include Associate POA)	
03-21-2006	Case Docketed to Examiner in GAU	
11-17-2005	Case Docketed to Examiner in GAU	
06-20-2005	IFW TSS Processing by Tech Center Complete	
06-20-2005	Case Docketed to Examiner in GAU	
09-05-2004	Transfer Inquiry to GAU	
08-03-2004	Application Return from OIPE	
08-03-2004	Application Return TO OIPE	
08-02-2004	Application Dispatched from OIPE	
08-03-2004	Application Is Now Complete	
07-06-2004	Additional Application Filing Fees	
07-06-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	
05-07-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	
03-17-2004	Cleared by OIPE CSR	
02-19-2004	IFW Scan & PACR Auto Security Review	
02-06-2004	Initial Exam Team nn	

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